NO. 46395-4-II

COURT OF APPEALS OF THE STATE OF WASHINGTON,

DIVISION II

STATE OF WASHINGTON,

Respondent,

vs.

CHRISTOPHER LOUIS WITHERS,

Appellant.

BRIEF OF APPELLANT

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ASSIGNMENT OF ERROR

Assignment of Error

1. The trial court erred when it entered findings of fact unsupported by substantial evidence.

2. The trial court erred when it denied the defendant's motion to suppress upon its ruling that a sheriff's deputy did not seize the defendant because a reasonably prudent person in the defendant's position would not have felt free to leave.

Issues Pertaining to Assignment of Error

1. Does a trial court err if it enters findings of fact unsupported by substantial evidence?

2. Under Washington Constitution, Article 1, § 7, and United States Constitution, Fourth Amendment, does a trial court err if it rules that a sheriff's deputy did not seize that defendant when a reasonably prudent person in the defendant's position would not have felt free to leave?

STATEMENT OF THE CASE

By an information originally filed on October 14, 2013, the Cowlitz County Prosecutor charged the defendant with one count of possession of methamphetamine and one count of first degree criminal impersonation. CP 1-2. The state later amended this information to change the second count to a charge of making a false or misleading statement to a public servant. CP 29-30. These charges arose out of an incident in which a deputy sheriff stopped and interrogated the defendant and an acquaintance on the street about them possibly possessing a stolen bicycle. RP 3-42, 44-54.[1] The incident culminated with the defendant's arrest on a warrant and the officer finding a small amount of methamphetamine in the defendant's pocket during a search incident to arrest. *Id.*

Following the filing of charges the defendant moved to suppress the evidence seized on the basis that the officer had initially detained him in violation of his rights under Washington Constitution, Article 1, § 7, and United States Constitution, Fourth Amendment, in that the officer did not have a reasonably articulable suspicion based upon objective facts that the defendant was engaged in criminal conduct. CP 7-10. The state's responsive

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[1]The record on appeal includes one continuously numbered volume of verbatim reports of hearings held on 5/27/14, 6/3/14, and 6/5/14. It is referred to herein as "RP [Page #]."

pleadings claimed that the deputy's encounter with the defendant was a social contact that did not rise to the level of a seizure, that the defendant was legally arrested pursuant to an outstanding warrant once the officers determined his identity, and that the search of the defendant's person was valid as a search incident to arrest. CP 22-29, 20-18.

The court later called this case for a hearing on the defendant's motion, during which three witnesses testified: (1) the deputy who initiated the contact with the defendant, (2) a police officer who later responded to the scene and arrested the defendant, and (3) the defendant. RP 3, 21, 38 and 44. In his testimony the defendant stated that he did not believe himself free to leave once the officer started interrogating him based upon a number of facts, including his claim that (1) the deputy passed them on the street driving in the opposite direction, turned around, came back, passed them, stopped his vehicle in a parking lot, and approached them as they walked up to him, (2) the deputy pulled his vehicle so his front "push bars" blocked the sidewalk such that the defendant and his companion would have had to step into the street to pass, (3) the deputy ordered the defendant and his companion to keep their hands on the handle bars of their bicycles and not place their hands in their pockets, and (4) the deputy aggressively questioned them about a stolen bicycle. RP 21-37.

Following reception of the testimony and argument by the parties the

court denied the motion. RP 54-61, 62-63. The court later entered the following findings of fact and conclusions of law on the motion:

FINDINGS OF FACT

1. On the morning of October 7, 2013, the dispatch center announced over the radio that there was a suspicious circumstance near Tam O'Shanter park. An off duty Sheriff's Deputy reported a possible theft of a bicycle after seeing two males riding bicycles near the area and pulling a third bicycle with them.

2. Deputy Baker of the Cowlitz County Sheriff's Office heard the announcement of the suspicious circumstance. While Deputy Baker was in the general location of the suspicious circumstance, he was not dispatched to investigate the call.

3. As Deputy Baker approached 1301 South 13th Avenue, he saw two male subjects riding bicycles in the opposite direction and matching the descriptions in the announcement. The two male subjects had a third bike and were approaching 1301 South 13th Avenue, Kelso, WA.

4. Deputy Baker made a u-turn, drove past both subjects, and parked his patrol vehicle in the parking lot of a business ahead of the two male subjects. Deputy Baker's vehicle did not impede or block the two subject's travel. Deputy Baker did not turn on his vehicle's lights or siren. Deputy Baker exited his patrol vehicle and approached the two subjects on foot alone. Deputy Baker wore his uniform and did not have his weapon drawn.

5. Deputy Baker did not feel there was a reasonable suspicion to conduct a Terry Stop and sought to engage the two subjects in a social contact about the dispatcher's announcement.

6. Deputy Baker approached both subjects and asked to speak to them. Both subjects voluntarily stopped and talked to Deputy Baker. Neither subjects were detained, cuffed, or placed under arrest. Both subjects remained with their bicycles. The defendant was one of the two subjects contacted by Deputy Baker.

7. The conversation between Deputy Baker and the two subjects about the third bicycle potentially being stolen lasted about five minutes. The information provided by both subjects regarding the bicycle did not result in either subjects being detained or arrested in relation to the third bicycle.

8. During the course of the initial 5 minute conversation, the defendant placed his hands in his pockets and was instructed by Deputy Baker to keep his hands out of his pockets for officer safety reasons. During his contact with both subjects, Deputy Baker verbally asked both subjects for their names. The defendant verbally identified himself as Jamey Leeroy Withers, but had trouble remembering the correct date of birth.

9. Deputy Baker thought it was suspicious that the defendant had trouble remembering the correct date of birth and looked up Jamey Leeroy Withers in his computer system. The defendant did not match the physical descriptions for Jamey Leeroy Withers.

10. Shortly after Deputy Baker looked up Jamey Leeroy Withers in his computer system, Officer Tim Gower of the Kelso Police Department arrived on scene as it was within the city limits of Kelso. Officer Gower observed both subjects not being in custody, not being cuffed, standing by their bicycles, and talking among themselves.

11. Deputy Baker advised Officer Gower of the discrepancy between physical descriptions for the defendant and Jamey Withers. Officer Gower looked into Spillman, saw a notation that Christopher Louis Withers had previously used Jamey Withers' name, looked up Christopher Louis Withers, and learned that there was a confirmed DOC warrant for Christopher Withers' arrest.

12. The defendant is Christopher Withers and was arrested on the warrant. The defendant knowingly lied to Deputy Baker about his name.

13. The other subject left the scene without incident.

CONCLUSIONS OF LAW

1. Article I, section 7, permits social contacts between police and

citizens. An officer's mere social contact with an individual in a public place with a request for identifying information, without more, is not a seizure or an investigative detention. This is true even when the officer subjectively suspects the possibility of criminal activity, but does not have suspicion justifying a Terry stop.

2. An individual asserting a seizure in violation of article I, section 7, bears the burden of proving that there was a seizure. A person is seized only when, by means of physical force or a show of authority, his or her freedom of movement is restrained and a reasonable person would not have believed he or she is (1) free to leave, given all the circumstances, or (2) free to otherwise decline an officer's request and terminate the encounter. Whether a person has been restrained by a police officer must be determined based upon the interaction between the person and the officer.

3. Deputy Baker's actions had all the hallmark of a social contact, except for his instruction for the defendant to keep his hands visible. Deputy Baker was justified in instructing the defendant to keep his hands visible for officer safety reasons and the instruction did not transform a social contact into a seizure.

4. Deputy Baker's contact with the defendant was not an unlawful seizure as he did not use physical force or exhibit a show of authority to restrain the defendant's freedom of movement and cause a reasonable person to believe he or she was not free to leave given all the circumstances.

5. The defendant's motion to suppress the evidence is denied because he was not unlawfully seized by Deputy Baker.

CP 35-39.

The defendant later stipulated to facts sufficient to convict, received a standard range sentence and filed timely notice of appeal. CP 31-43, 41-54.

ARGUMENT

I. THE TRIAL COURT ERRED WHEN IT ENTERED FINDINGS OF FACT UNSUPPORTED BY SUBSTANTIAL EVIDENCE.

The standard of review of a trial court's findings of fact is the "substantial evidence test." *In re J.N.*, 123 Wn.App. 564, 95 P.3d 414 (2004) Under this test, the reviewing court will sustain the findings "if the record contains evidence of sufficient quantity to persuade a fair-minded, rational person of the truth of the declared premise." *State v. Ford*, 110 Wn.2d 827, 755 P.2d 806 (1988). In making this determination the reviewing court will not revisit issues of credibility, which lie within the unique province of the trier of fact. *Id.* Finally, findings of fact are considered verities on appeal absent a specific assignment of error. *State v. Hill, supra.*

By contrast, an appellant need not assign error to a specific conclusion of law by number in order to preserve the issue on appeal because this argument presents an issue of law that the appellate court reviews de novo. *State v. Dempsey*, 88 Wn.App. 918, 947 P.2d 265 (1997). However, when a conclusion of law contains an assertion of fact, it functions as a finding of fact and is reviewed under the substantial evidence rule and requires an assignment of error. *Estes v. Bevan*, 64 Wn.2d 869, 395 P.2d 44 (1964).

In the case at bar, appellant assigns error to the following portions of Findings of Fact 6 and 9 and Conclusion of Law 3 as noted in italics and

bold:

> 6. Deputy Baker approached both subjects and asked to speak to them. ***Both subjects voluntarily stopped*** and talked to Deputy Baker. Neither subjects were detained, cuffed, or placed under arrest. Both subjects remained with their bicycles. The defendant was one of the two subjects contacted by Deputy Baker.
>
> 9. Deputy Baker thought it was suspicious that the defendant had trouble remembering the correct date of birth and looked up Jamey Leeroy Withers in his computer system. ***The defendant did not match the physical descriptions for Jamey Leeroy Withers.***
>
> 3. Deputy Baker's actions had all the hallmark of a social contact, except for his instruction for the defendant to keep his hands visible. ***Deputy Baker was justified in instructing the defendant to keep his hands visible for officer safety reasons and the instruction did not transform a social contact into a seizure.***

CP 36-38.

As noted above the defendant first assigns error to that portion of Finding of Fact No. 3 in which the court found that "both subjects voluntarily stopped." In fact, the determination of this fact was the first controlling issue in the defendant's suppression motion. The defendant himself testified that he believed he was not free to go and the state did not present any evidence to the contrary. Thus, substantial evidence does not support this factual finding. In addition to a larger extent this finding is really an ultimate conclusion of law that is at issue in this appeal. However, defendant assigns error to it to the extent that this court determines that it is a finding of fact because the only evidence given on the issue only supports the contrary

conclusion.

In Finding of Fact No. 9 the court held: "The defendant did not match the physical descriptions for Jamey Leeroy Withers." This was not Deputy Baker's testimony or claim. Rather his testimony on this point was as follows: "A. The physicals saw – they didn't quite match up either." RP 10. There is a wide gulf between "did not match the physical descriptions" as found by the court and "didn't quite match up" as stated by Deputy Baker. Thus, this finding by the court is unsupported by substantial evidence.

Finally, in this case the court stated the following in Conclusion of Law No. 3.

> Deputy Baker was justified in instructing the defendant to keep his hands visible for officer safety reasons and the instruction did not transform a social contact into a seizure.

CP 38.

In this case a careful review of the evidence presented at the suppression motion reveals absolutely no factual basis to justify any command that the defendant keep his hands in view at a location designated by the officer. The encounter was in the daytime, the crime the officer was investigating was a non-violent misdemeanor, there had been no aggressive conduct by the defendant, and the officer had no basis upon which to suspect that the defendant possessed a weapon much less that he would attempt to use it. Indeed, to say that under these facts the officer was justified in ordering

the defendant to keep his hands on his bicycle handlebars "for officer safety reasons" is tantamount to simply saying that an officer may command any person under any circumstances to keep his or her hands in a specific location irrespective of any supporting facts at all. This conclusion flies in the face of the deputy and the state's claims that this was a social contact and that the defendant was free to leave at any time.

II. THE TRIAL COURT ERRED WHEN IT DENIED THE DEFENDANT'S MOTION TO SUPPRESS UPON ITS RULING THAT A SHERIFF'S DEPUTY DID NOT SEIZE THE DEFENDANT BECAUSE A REASONABLY PRUDENT PERSON IN THE DEFENDANT'S POSITION WOULD NOT HAVE FELT FREE TO LEAVE.

Under Washington Constitution, Article 1, § 7, and United States Constitution, Fourth Amendment, warrantless searches are per se unreasonable. *State v. Simpson*, 95 Wn.2d 170, 622 P.2d 1199 (1980). As such, the courts of this state will suppress the evidence seized as a fruit of that warrantless detention unless the prosecution meets it burden of proving that the search falls within one of the various "jealously and carefully drawn" exceptions to the warrant requirement. R. Utter, *Survey of Washington Search and Seizure Law: 1988 Update*, 11 U.P.S. Law Review 411, 529 (1988).

As one of the exceptions to the warrant requirement, the police need not have probable cause in order to justify a brief investigatory stop. *Terry*

v. Ohio, 392 U.S. 1, 20 L.Ed.2d 889, 88 S.Ct. 1868 (1968). However, in order to justify such action, the police must have a "reasonable suspicion, based on objective facts, that the individual is involved in criminal activity." *Brown v. Texas*, 443 U.S. 47, 51, 61 L.Ed.2d 357, 99 S.Ct. 2637 (1979) (emphasis added). Subjective good faith is not sufficient. *Terry v. Ohio*, 392 U.S. at 22, 20 L.Ed.2d at 906, 88 S.Ct. at 1880. *See generally* R. Utter, *Survey of Washington Search and Seizure Law: 1988 Edition*, 11 U.P.S. Law Review 411, § 2.9(b) (1988). Furthermore, the stop is only reasonable to the point "the limited violation of individual privacy" is outweighed by the public's "interests in crime prevention and detection . . . ." *Dunaway v. New York*, 442 U.S. 200, 60 L.Ed.2d 824, 99 S.Ct. 2248 (1979).

In the case at bar the defense argued in its suppression motion that Deputy Baker illegally seized him because the Deputy did not have a reasonably, articulable suspicion based upon objective facts that the defendant was engaged in criminal conduct. The state conceded that the deputy did not have a legal basis for a *Terry* stop. However, the state argued that the deputy's encounter with the defendant was merely a "social contact" which did not amount to a seizure of the defendant's person for the purpose of either Washington Constitution, Article 1, § 7, or United States Constitution, Fourth Amendment. The following addresses this argument.

Not every encounter with the police is a seizure, and a police officer

need not have a legal justification when merely approaching an individual in a public place and asking questions as long as a reasonable individual under the circumstances would feel free to walk away. *United States v. Mendenhall*, 446 U.S. 544, 100 S.Ct. 1870, 64 L.Ed.2d 497 (1980); *State v. Mennegar*, 114 Wn.2d 304, 787 P.2d 1347 (1990). Rather, under United States Constitution, Fourth Amendment and Washington Constitution, Article 1, § 7, a seizure occurs when "an individual's freedom of movement is restrained and the individual would not believe he or she is free to leave or decline a request due to an officer's use of force or display of authority." *State v. Rankin*, 151 Wn.2d 689, 695, 92 P.3d 202 (2004). This is an objective standard, and the officer's subjective suspicions and intent are irrelevant except as reflected in the officer's actions. *State v. O'Neill*, 148 Wn.2d 564, 62 P.3d 489 (2003).

The fact that a uniformed, armed police officer in a marked patrol vehicle stops next to a citizen on the street, gets out, approaches, and asks a question does not necessarily constitute a seizure, although it might under the right circumstances. *State v. O'Neill*, 148 Wn.2d at 574. In addition, the fact that the officer orders a person to remove his hands from his pockets, by itself, does not necessarily change a social contact into a seizure, although it might do so under the right circumstances. *State v. Nettles*, 70 Wn.App. 706, 855 P.2d 699 (1993). Rather, the ultimate issue is whether or not, under all

of the facts and circumstances of the case, a reasonable person would have felt free to decline the officer's request and terminate the encounter. *State v. Armenta*, 134 Wn.2d 1, 948 P.2d 1280 (1997).

Whether or not the police have seized a person or merely engaged in a social contact constitutes a mixed question of law and fact. *State v. Armenta*, 134 Wn.2d at 9. While a resolution by a trial court on differing factual claims is reviewed under the substantial evidence rule, the ultimate determination whether or not those facts constitute a seizure or a social encounter is a question of law that is reviewed de novo. *Id.*

For example, in *State v. Nettles*, *supra*, a uniformed Seattle police officer pulled her marked patrol vehicle to the curb by the defendant and a second person who were walking together on the street, got out, and said "Gentlemen, I'd like to speak with you, could you come to my car?" In response, the other person turned around and walked away. However, the defendant did walk up to her patrol vehicle. As he did, the officer ordered him to take his hands out of his pocket. He complied, and when he did, he took a small bindle of drugs out of his pocket and threw it to the ground. The officer then arrested him for possession of those drugs.

The defendant later moved to suppress the contraband, arguing that the officer had illegally seized him when she asked him to walk over to talk to her and ordered him to take his hands out of his pockets. During his

testimony in support of his motion to suppress, the defendant stated that he did not feel threatened by the officer, that he assumed she just wanted to talk, and that he did not think he was under arrest or that he was going to be arrested. When asked on re-direct examination why he didn't just walk away, he replied that he had no reason to do so. Based upon the totality of these facts and circumstances and the defendant's testimony, the trial court denied the motion to suppress. Following conviction, the defendant appealed, arguing that the trial court had erred when it denied the motion to suppress.

On appeal, the state argued that (1) under the facts of the case, there was no seizure, and (2) that even if there was a seizure, the defendant voluntarily abandoned the evidence the officer seized. The court first addressed the second argument, noting that while the police may properly seize voluntarily abandoned property, such property is not voluntarily abandoned where the defendant shows (1) unlawful police conduct and (2) a causal nexus between the unlawful conduct and the abandonment. *State v. Nettles*, 70 Wn.App. at 710 (citing *State v. Whitaker*, 58 Wn.App. 851, 853, 795 P.2d 182 (1990)). Thus, the question of involuntary abandonment would only arise if there was a seizure. In turning to this issue, the court found no seizure under the facts of the case. The court held the following on whether or not the officer's actions constituted a seizure under the facts and circumstances of the case.

> We now turn to an analysis of the facts of this case. Officer Wong did not approach Nettles and his companion with either siren or patrol lights. When exiting her car she did not draw her gun. She addressed Nettles and his companion in a normal voice when requesting to speak with them. Until Nettles voluntarily discarded a plastic baggie of cocaine, Wong made no attempt to stop Nettles' companion, who continued to walk away after she asked to speak with both men. This alone is a forceful indication that neither individual was required to or felt compelled by the circumstances to stop. Officer Wong made no attempt to immobilize Nettles – she did not request and retain his identification and she did not direct him to place his person in any particular location or position, such as hands on the patrol car, that would have implied a loss of freedom to a reasonable person. There is nothing to indicate that he could not have declined to speak to her or approach her car.
>
> Second, although not dispositive, nothing in the record indicates that Nettles himself perceived the encounter as other than permissive in nature.

State v. Nettles, 70 Wn.App. at 711.

By contrast, in *State v. Harrington*, 167 Wn. 2d 656, 222 P.3d 92 (2009), the court found the combination of requesting permission to frisk, an order to keep hands in sight, and the presence of a second officer sufficient to change a social contact into a seizure. In this case a Richland Police Officer saw the defendant walking down a main avenue in town late at night and decided to stop and find out what he was doing. The officer stopped, got out of his vehicle, approached the defendant and asked if they could talk. The officer did not turn on his lights and did not obstruct the defendant's path.

During the conversation that ensued the officer asked the defendant where he was coming from and where he was going. The defendant replied that he was coming from his sister's house but couldn't remember where she lived. During the conversation the officer ordered the defendant to keep his hands out of his pockets. At some point a State Patrol Officer happened by, stopped his vehicle, got out, and stood off at a distance without saying anything. The police officer then saw a bulge in the defendant's pocket, asked what it was and then arrested the defendant upon hearing the response that it was "his glass," which was slang for his methamphetamine pipe. During a search incident to arrest the officer found a baggie of methamphetamine on the defendant's person. The defendant later unsuccessfully moved to suppress this evidence, appealed, lost and then obtained review before the Washington Supreme Court.

In attempting to distinguish between social contacts and detentions the Supreme Court relied heavily upon the decision in *State v. Soto-Garcia,* 68 Wn.App. 20, 841 P.2d 1271 (1992), *abrogated on other grounds by State v. Thorn,* 129 Wn.2d 347, 917 P.2d 108 (1996). The court noted the following from *Soto-Garcia*:

> In *Soto-Garcia*, Kelso Police Officer Kevin Tate performed a social contact with Marcelo Soto-Garcia as the latter walked out of an alley. Soto-Garcia approached Tate's patrol car when the officer pulled to the side of the road. Tate asked Soto-Garcia where he was coming from and where he was going. Tate asked for Soto-Garcia's name, in

response to which Soto-Garcia produced identification. Tate ran identification and warrant checks in Soto-Garcia's presence. When the checks came back clean, Tate asked if Soto-Garcia had any cocaine on his person. Soto-Garcia denied having cocaine. Tate then asked if he could search Soto-Garcia, who replied, "'Sure, go ahead.'" Tate reached into Soto-Garcia's shirt pocket and discovered cocaine.

The Soto–Garcia court held Tate's combined acts aggregated to seize Soto-Garcia. "The atmosphere created by Tate's progressive intrusion into Soto-Garcia's privacy was of such a nature that a reasonable person would not believe that he or she was free to end the encounter." The court then inquired whether Soto-Garcia's subsequent consent to search was valid in light of the prior illegal seizure, answering in the negative."Soto-Garcia's consent to the search was obtained through exploitation of his prior illegal seizure." Accordingly the court found suppression of the cocaine proper.

State v. Harrington, 167 Wn. 2d at 668-69 (citations omitted).

After reviewing this passage from *Soto-Garcia*, the court in *Harrington* went on to note a progressive intrusion into the defendant's privacy in the same manner as it existed in *Sotto-Gracia.*

Similar to *Soto-Garcia*, Harrington endured a progressive intrusion at the hands of Reiber. Tate's progressive intrusion included an inquiry about Soto–Garcia's identification, warrant check, direct question about drug possession, and request to search – all of which, combined, formed a seizure. The independent elements of Harrington's seizure are different, but the effect is the same. Before Reiber's request to search, he did not ask for Harrington's name or address, did not conduct a warrant check, and did not ask if Harrington carried drugs. Instead Reiber initiated contact with Harrington on a dark street. He asked questions about Harrington's activities and travel that evening and found Harrington's answers suspicious. A second officer arrived at the scene and stood nearby. Reiber asked Harrington to remove his hands from his pockets to control Harrington's actions. Then Reiber asked to frisk, without any "'specific and articulable facts'" that would create an objectively

> reasonable belief that Harrington was "'armed and presently dangerous.'" The facts in both Soto-Garcia and this case create an atmosphere of police intrusion, culminating in a request to frisk.

State v. Harrington, 167 Wn. 2d at 669.

Thus, in the same manner that the court in *Sotto-Garcia* found that an initial social contact matured into a detention, so in *Harrington* the court came to the same conclusion.

The facts from the case at bar, when compared to the facts from *Nettles*, *Soto-Garcia* and *Harrington* indicate that in the same manner that the initial social contacts from *Soto-Garcia* and *Harrington* changed into seizures so in the case at bar the initial social contact changed into a seizure. The following facts support this conclusion: (1) at the time the deputy approached the defendant he had no reason to believe the defendant had participated in any illegal conduct as there had been no reported theft of a bicycle and the defendant and his companion were not acting in any furtive manner, (2) when the deputy first began questioning the defendant and his companion he made it clear that he was investigating a possible theft, (3) the deputy ordered the defendant to take his hands out of his pocket and maintain them on the handlebars of his bicycle without any "specific and articulable facts" that would create an objectively reasonable belief that the defendant was "armed and presently dangerous," (4) the deputy requested written and oral identification, and (5) a second officer arrived at the scene.

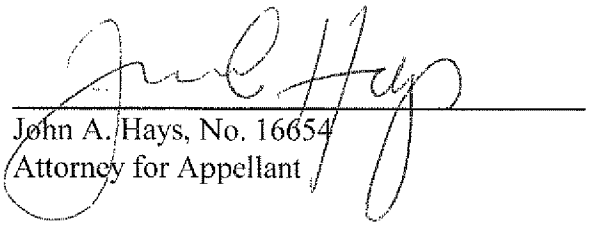
As the facts from *Harrington* reveal, any one or perhaps two of these facts alone would not necessarily elevate a social contact into a detention in the mind of a reasonable person. However, as the decisions in both *Soto-Garcia* and *Harrington* reveal, the combination of these facts do forcefully change what began as a social contact into a seizure of the person in the mind of a reasonably prudent person. Thus, in the same manner that the courts in *Soto-Garcia* and *Harrington* reversed the trial courts' refusals to suppress, so in this case this court should reverse the trial court's refusal to suppress.

CONCLUSION

This trial court erred when it denied the defendant's motion to suppress. As a result this court should reverse the defendant's conviction and remand with instructions to grant the motion to suppress.

DATED this 12th day of November, 2014.

Respectfully submitted,



John A. Hays, No. 16654
Attorney for Appellant

APPENDIX

WASHINGTON CONSTITUTION
ARTICLE 1, § 7

No person shall be disturbed in his private affairs, or his home invaded, without authority of law.

UNITED STATES CONSTITUTION,
FOURTH AMENDMENT

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons and things to be seized.

COURT OF APPEALS OF WASHINGTON, DIVISION II

STATE OF WASHINGTON, **Respondent,**	**NO. 46395-4-II**
vs.	**AFFIRMATION OF SERVICE**
CHRISTOPHER L. WITHERS, **Appellant.**	

The under signed states the following under penalty of perjury under the laws of Washington State. On this, I personally e-filed and/or placed in the United States Mail the Brief of Appellant with this Affirmation of Service Attached with postage paid to the indicated parties:

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Diane C. Hays

Diane C. Hays

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